IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2414 of 2006
to
FIRST APPEAL No. 2431 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPL.LAQ OFFICER - Appellant(s)
Versus
RAMANBHAI CHHAGANBHAI & 1 - Defendant(s)

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Appearance :
MR SS SHAH, GOVERNMENT PLEADER for Appellant(s) (In FA:2414 to 2419/06)
MS KRINA P.CALLA, AGP, for Appellant(s) (In FA: 2420 to 2425/06)
MS TANUJA KACHCHHI, AGP, for Appellant(s) (In FA: 2426 to 2431/06)
MR GM AMIN for Respondent(s)-Claimant(s) (In all FAs)

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CORAM : HON'BLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 24/11/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. These Appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, are directed against the common judgment and award dated August 31, 2004, rendered by the learned Second Extra Assistant Judge and Special Judge (LAR), Ahmedabad (R) at Navrangpura in Land Reference Case No.1750 of 1996 to Land Reference Case No.1767 of 1996, by which the claimants are awarded additional compensation at the rate of Rs.20.50/- per sq.mt. for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Re.0.75 ps. per sq.mt. by his award dated October 19, 1995.

2. The Executive Engineer, Narmada Project, Canal Division No.3/5, Dholka, proposed to the State Government to acquire the lands of

village Kariyan, Taluka: Dholka, District: Ahmedabad, for the public purpose of construction of Narmada Canal. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Kariyan were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued, which was published in the official gazette on November 13, 1992. The land owners were thereafter served with notices under Section 4(1) of the Act. They opposed the proposed acquisition. After considering their objections, the Special Land Acquisition Officer forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the lands of village Kariyan which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of construction of Narmada Canal. Therefore,

a declaration under Section 6 of the Act was made which was published in the official gazette on November 30, 1993. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated October 19, 1995, offered compensation to the claimants at the rate of Re.0.75 ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the Court for determination of just amount of compensation payable to them. Accordingly, References were made to the District Court,

Ahmedabad (R) where they were registered as Land Reference Case No.1750 of 1996 to Land Reference Case No.1767 of 1996.

3. On behalf of the claimants, witness Dahyabhai Manibhai Patel was examined at Ex.31. Apart from stating that each claimant was earning the net income of Rs.40,000/- per year per Vigha from the sale of agricultural produces, the witness maintained before the Court that the lands of village Koth, which were previously acquired, were similar in all respects to the lands acquired in the instant case, and produced the previous award of the Reference Court relating to the lands of village Koth for consideration of the Court. Though this witness was cross-examined by the acquiring authorities, nothing substantial could be elicited.

4. On behalf of the appellant, witness Gautamkumar Manilal Patel was examined at Ex.50. At the time of tendering evidence, he

was discharging the duties as Deputy Executive Engineer. In his cross-examination, the witness had to admit that the boundaries of village Kariyan and village Koth were common.

5. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of village Koth was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. Placing reliance on the said previous award, the Reference Court has held by the impugned award that the claimants are entitled to additional amount of compensation at the rate of Rs.20.50 per sq.mt. giving rise to these Appeals.

6. This Court has heard Mr.S.S.Shah, learned Government Pleader and Mr.Gopinath M.Amin, learned counsel for the claimants at length. This Court has also considered the paper-

book supplied by the learned counsel for the claimants which includes the oral as well as documentary evidence adduced by the parties before the Reference Court.

7. Though the claim made by witness Dahyabhai Manibhai Patel that each claimant was earning the net income of Rs.40,000/- per year per Vigha from the sale of agricultural produces could not be made good, there is no manner of doubt that the lands acquired were irrigated and fertile and that each claimant was able to raise different crops such as Cotton, Juwar, grain, Rice, Wheat, Tuver, etc. It is relevant to notice that enhanced compensation was not claimed by the claimants either on the basis of comparable sale instances or on the basis of yield derived from the lands acquired. What was relied upon by them was the previous award of the Reference Court relating to the lands of village Koth. The said award was produced at Ex.28. Exhibit 28 indicates that the lands of village Koth were acquired for the

public purpose of construction of Electric Sub Station pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on June 21, 1983. Therein, the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.3.50/- per sq.mt. Feeling aggrieved, References were sought and the Reference Court, by judgment and award dated April 13, 1987, had awarded additional compensation to the claimants at the rate of Rs.8.50 ps. per sq.mt. Thus, the claimants of village Koth were in all awarded compensation at the rate of Rs.12/- per sq.mt.

8. The testimony of witness examined on behalf of the claimants is scrutinized by this Court and as observed earlier, the assertion made by the said witness that the lands acquired in the instant case were similar in all respects to the lands acquired from village Koth could not be demonstrated to be untrue. Exhibit 29 is the judgment of the

High Court which indicates that the previous award of the Reference Court rendered in Land Acquisition Case No.26 of 1987 and 27 of 1987 relating to the lands of village Koth was subjected to challenge in First Appeals No.201 of 1988 and 202 of 1988 which were dismissed by the Division Bench of this Court comprising K.R.Vyas, J. (as he then was) and H.K.Rathod, J. by judgment dated October 17, 2002. It is well settled that the award of the Reference court, which has attained finality, can be considered as a good piece of evidence for assessing the market value of the lands acquired from the adjoining village if the lands are found to be similar. Under the circumstances, this Court is of the opinion that the Reference Court in the instant case did not commit any error in placing reliance upon the previous award of the Reference Court relating to village Koth for the purpose of determining the market value of the lands acquired in the instant case.

9. As noticed earlier, the notification under Section 4(1) of the Act was published in the official gazette on June 21, 1983, for acquiring the lands of village Koth whereas notification in the instant case under Section 4(1) of the Act was published in the official gazette on November 13, 1992, and in view of the time-gap between issuance of notifications under Section 4(1) of the Act, the claimants would be entitled to rise in price of lands at the rate of 10% p.a.

10. On re-appreciation of evidence adduced by the parties, this Court is of the opinion that the Reference Court has recorded correct findings of facts to which settled principles of law have been applied. The learned Government Pleader could not persuade the Court to take a view different than the one taken by the Reference court in the impugned judgment so was to warrant interference by this court in the instant Appeals. Therefore, the Appeals which lack merits, deserve to be dismissed.

11. For the foregoing reasons, all the Appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this Judgment immediately.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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